

PMOC SPECIAL REPORT

Review of Uniform Relocation Assistance Act Compliance

OP-3 – Technical Assistance and Special Tasks Report
Honolulu Rail Transit Project

City and County of Honolulu
Honolulu Authority for Rapid Transportation (HART)
Honolulu, HI

Final Report

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Background

The Honolulu Rail Transit Project¹ (the Project) is to provide fast, reliable public transportation services to a rapidly developing area and to ease congestion in the east-west transportation corridor between Kapolei and the University of Hawaii at Manoa. The Project is also intended to provide basic mobility in areas with diverse populations. The Project supports the goals of Oahu's General Plan and the 2030 Oahu Regional Transportation Plan by serving areas designated for urban growth.

FTA approved the request by the City and County of Honolulu (the City) to advance the project into Preliminary Engineering (PE) on October 16, 2009, Final Design (FD) on December 29, 2011, and Full Funding Grant Agreement (FFGA) on December 19, 2012.

In February 2018, the Honolulu Authority for Rapid Transportation (HART) notified FTA of certain areas of non-compliance with the relocation assistance requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (the Uniform Act or URA) after it performed its own compliance assessment through a consultant familiar with the relocation assistance requirements of the URA. This assessment indicated that non-compliance with the URA relocation assistance requirements was pervasive throughout the project. The primary non-compliance issues focused on payments to displaced persons that exceeded amounts prescribed under the URA, also referred to as overpayments. In February 2019, FTA notified HART that it would undertake a physical inspection of all HART relocation assistance files to determine HART's level of compliance with the relocation assistance requirements of the URA.

Scope of Review

The purpose of this review was to assess HART's compliance with the relocation assistance requirements of the URA and its implementing regulations at 49 CFR Part 24. The review included two phases:

- Phase 1 - Conduct a site visit at the HART offices May 13-17, 2019 to review and inspect HART's project relocation assistance files.
- Phase 2 – Provide an OP-3 – Technical Assistance and Special Tasks written report that includes the following items:
 1. A summary of each relocation parcel file and the specific areas in which each are deficient with 49 CFR Part 24 (URA) requirements.
 2. An assessment of the degree to which the overall HART project is: a) in compliance with URA requirements; b) is not in compliance with URA requirements but can be brought back into compliance; or c) is not in compliance with URA requirements and cannot be brought back into compliance.
 3. If the project can be brought into URA compliance, what specific action items would HART need to correct to comply with the requirements.

¹ Name used in the FFGA and HART's PMP.

4. An assessment of the status of HART's current real estate staff and its relocation consultants regarding their capability and capacity to fully comply with URA requirements moving forward.

The Uniform Act

The URA is a federal law (Public Law 91-646, as amended) that applies to all acquisitions of real property or displacements of persons resulting from federal or federally-assisted programs or projects. The URA and its implementing regulations at 49 CFR Part 24 have a two-fold purpose: to ensure that persons displaced as a direct result of federal or federally-assisted projects are treated fairly, consistently, and equitably so that such displaced persons will not suffer disproportionate injuries because of projects designed for the benefit of the public and ensure that owners of real property to be acquired are treated fairly and consistently. The regulations also have an objective of ensuring that agencies implement the regulations in a manner that is efficient and cost effective. The Federal Highway Administration (FHWA) is the designated lead agency responsible for the implementation of the URA.

Relocation assistance is mandated by the URA and implemented by regulations (49 CFR Part 24). Congress tied compliance with the law to funding of other aspects of the project, which means that federal funding in any phase of a project, including construction, requires compliance with URA requirements for acquisition and relocation. FTA grants also cite the necessity of compliance with all aspects of the URA, including the provision of relocation payments and services.

To assess the compliance of the HART relocation program, the PMOC review focused on HART's performance in the following areas.

- Advisory Services
- Recordkeeping
- Documentation
- Notice Requirements
- Probable Overpayment
- Probable Underpayment
- Ineligible Payments
- Benefits Not Offered or Paid
- Global Settlements

A brief description of the importance of each area is provided to explain why compliance is necessary for a successful relocation program.

Advisory Services

Congress required a displacing agency to provide advisory assistance because it was presumed that persons being displaced would not be versed in the relocation program. Further, Congress anticipated that many displaced persons, residential and nonresidential, would need assistance in locating replacement property. Specifically, advisory services as provided for in the URA regulations require that an agency must inform potential displaced persons of the program, conduct a personal interview to determine the needs and preferences of a displaced person, provide an explanation of the relocation program and its options, address the displaced person's questions concerning the program and options, provide notices as to specific eligibility, and provide information about available replacement property. §24.205(c) of the URA regulations contains

additional specific services that are required. Advisory assistance should occur throughout the displacement process. An agency's advisory services form the core of a high-quality relocation program.

Recordkeeping

The URA regulations provide a simple, clear statement about recordkeeping requirements at §24.9. "The Agency shall maintain adequate records of its acquisition and displacement activities in sufficient detail to demonstrate compliance with this part." The records and documentation must be sufficient to permit review by FTA to determine compliance. The documentation needs to clearly set out the eligibility of displaced persons and must demonstrate that displaced persons receive the appropriate payments to which they are entitled. FTA grants require compliance with the URA when the grantee acquires real estate or displaces persons, therefore, the recordkeeping provision is key to grant compliance verification.

Documentation

Documentation must be maintained in each file to show how the agency implemented the relocation requirements for the displaced person. The documentation consists of various types of supporting records, but foremost among these is typically a narrative type journal or log that is tied to each step of the relocation process – from the agency's first contact with the displaced person, through eligibility determination, payment calculations, the move to the replacement property, and final claim forms. The documentation in the file must clearly tell the story of the relocation including how and why specific actions and payments were made. Documentation should address:

- The eligibility of a person(s)
- Advisory services offered and provided
- The delivery of required notices
- The determination of maximum payment amounts
- The calculation of the actual payment made to the displaced person
- Proof of payment

Notice Requirements

The URA regulations require the delivery of certain relocation notices to displaced persons at various times in the relocation process. Each notice fulfills a different purpose, however, they all provide information that is an important element of advisory services. The General Information Notice is usually given to persons the agency anticipates will be displaced since a person's eligibility for relocation cannot be established until the date negotiations are initiated through the first written offer to the property owner. This notice provides the necessary information about the relocation program, describes the nature of advisory services available and explains the person's likely eligibility for certain relocation payments. The Notice of Relocation Eligibility informs a person that they are displaced by the project and establishes eligibility for specific benefits on the date of initiation of negotiations (ION). This notice should be delivered promptly after the ION. Although the regulations do not define the term "promptly," most agencies consider a reasonable period for delivery to be within 14 days and not more than 30 after ION. The Ninety-Day Notice may either provide a displaced person with an assurance that the agency will not require them to move from the subject property in less than 90 days, usually from the date of delivery, or it provides a 90-day period to move with a specific vacate date. This 90-day period to accomplish a move is one of the most important protections the URA affords a displaced person, and the displacing

agency should fulfill this obligation, unless it determines the 90 days is impracticable. For example, the agency may determine continued occupancy represents a health or safety risk to the occupant. The agency would have to document this decision in the parcel file.

Overpayments/Ineligible Payments

Overpayments occur when the relocation payments to the displaced person exceed the amounts prescribed in the URA or its implementing regulations. These excess payments are not generally a violation of the URA since the law sets its payments as the minimum that must be paid. Many states have enacted laws that mandate payments greater than the URA, such as reestablishment payments higher than \$25,000 or fixed nonresidential payments greater than \$40,000. As such, these larger payments are not considered a detriment to the relocation program. FTA does not participate in payments which are above the amounts required by the URA. Hawaii state law has no state mandated payments which exceed URA authorized payment amounts.

Overpayments may also occur when the relocation payment is not calculated correctly. The URA provides a list of certain items that are specifically ineligible for payment.

The URA regulations specify a formula for computing some moving expense payments, such as actual direct loss of tangible personal property and substitute personal property. If this formula is not properly applied, it can result in a payment that is more than the amount specified in the regulations.

Ineligible payments occur on projects through error or as an administrative remedy for an unusual situation. The URA provides a list of certain items that are specifically ineligible for payment. A payment may be considered ineligible if it is not required or supported by the URA, but it may not be a violation of the law provided the agency makes all eligible payments under the relocation program. These types of ineligible payments must be carefully documented in the file and noted on the payment claim form as federally non-participating costs. Relocation payments that represent a duplication of other payments the displaced person has received are ineligible and these occurrences are a violation of the URA. FTA does not participate in any ineligible payments since they are not grant eligible.

Probable Underpayments

Underpayments occur when a displaced person does not receive the relocation payment for which they are eligible; typically, an underpayment means the agency did not provide the displaced person with the full eligible amount. As an example, the agency may compute a maximum replacement housing payment based on a 2-bedroom replacement dwelling, however, a comparable replacement dwelling for the displaced household must be 3 bedrooms to meet decent, safe and sanitary standards.

The failure to provide displaced persons with the full amount of their relocation payment is a URA violation. Underpayments may lead to the inability of displaced persons to successfully relocate, since the relocation payments are principally used to move and buy or rent replacement property.

Benefits Not Offered or Paid

Relocation benefits are mandated by law and by terms of the FTA grant agreement. An agency must offer all eligible payments to a displaced person and provide advisory assistance to ensure the person claims these amounts. Any variance from that norm must be documented in the relocation file.

The failure to offer displaced persons benefits for which they are eligible or ensure they receive payment for these benefits represents a major deficiency of a relocation program.

Global Settlements

Global settlements are negotiated lump-sum payments that are a combination of relocation payments and acquisition funds. Global settlements are not permitted by the URA since there is no documentation of the actual cost incurred to qualify for the relocation payment. FTA does not participate in global settlements.

Conducting the Site Review

All persons who reviewed HART relocation parcel files have substantial experience in the URA relocation program. Each HART file review was guided by an FTA Relocation File Evaluation Form. The Evaluation Form was used to assure a consistent review and mirrored the above nine focus areas. A separate Evaluation Form was used for each relocation parcel based on the type of either residential or nonresidential displacement. The Evaluation Form addressed issues of compliance based on specific subsections of the regulations. The residential and nonresidential forms were substantially the same but reflected the differences in the two types of relocation.

The Evaluation Forms for residential and nonresidential displacements prompted reviewers to assess the following items:

Subpart A General

- The method for delivery of notices and documentation of receipt by the displaced person to assure that persons were reasonably informed of the relocation program.
- Adequacy of file records maintained.
- Appeal requirements met, if applicable.

Subpart B Real Property Acquisition

- Determination of real property vs. personal property documented in file.
- For any tenant-owned improvements, the compensation paid, the basis for determining the compensation and the required support documentation in the file.
- Likely duplication of payments to acquire a tenant-owned improvement and relocation payments to move it.

Subpart C General Relocation Requirements

- Required relocation notices included in the file: General Information Notice (usually a brochure outlining the relocation program), Notice of Relocation Eligibility, and either a Ninety Day Letter of Assurance (which may require a 30-Day Notice to Vacate) or a Ninety Day Letter to Vacate.
- Comparable replacement dwelling made available to residential displaced person. About the time that the property is appraised, the relocation function begins by determining the availability of replacement housing for the displaced person. For both tenants and owners, a comparable replacement dwelling is located and used to determine the maximum replacement housing subsidy that will be offered to the displaced person. Once the initiation of negotiations has occurred for the subject property, the displaced person is contacted, and relocation benefits are offered. These offers are made in writing and should identify the property used in the calculation of the maximum payment. The oral

presentation and the written materials also identify options for payment of moving costs, other incidental costs, and real estate closing costs. These benefits are typically presented in a person-to-person meeting so that questions as to the time to obtain the funds, and the requirements to obtain the funds can be specifically addressed.

- Advisory services provided. For residential displaced persons, an offer of advisory assistance is made to assist the person with locating and purchasing or renting a replacement property. The delivery of notices, explanation of the payments and options available is also advisory assistance. This process must be documented in the file. For nonresidential displaced persons, advisory assistance includes notice delivery, explanation of move cost payments and options available, list of available suitable replacement sites.

Subpart D Payments for Moving and Related Expenses

- Method of move cost reimbursement for displaced person, move cost calculation, and whether it met requirements.
- For nonresidential displaced persons, other related move expenses or reestablishment expenses claimed.

Subpart E Replacement Housing Payments

- Occupancy type (owner occupant/90-day tenant/less than 90-day occupant)
- Claim type
- Housing of Last Resort determination documented, if applicable
- Low Income Determination completed for tenants
- Decent, safe and sanitary inspection conducted

The reviewers also used the Evaluation Form to verify other information and document findings.

- All eligible payments were actually made. This included the payment of moving costs as elected by the displaced person; and the appropriate payment of replacement housing based on the agency's calculation and actual replacement acquired by the displaced person. In each of these cases, the file must support the payments actually made.
- A list of all payments made to the displaced person as identified in the file.
- A list of all findings identified by the reviewer (all missing items, responses in the negative and "NO" answers for the items related to the URA regulation Subparts required a finding). These findings were further separated by the likelihood that deficiency was "Curable" or "Not Curable." For example, a payment that was not made or not fully made to the displaced person might be a curable finding since HART may still be able to locate the person and make the full payment. An incurable finding might be the omission of various notices, since the provision of those notices at this time would have no effect under the regulations and serve no purpose. Corrective actions were provided for curable findings.
- Evaluation of the overall relocation payment – either correct payment, probable overpayment, which is not curable and not eligible for Federal participation, or probable underpayment which requires corrective action. If the file contained adequate documentation, it may be possible to estimate the amount of overpayment or underpayment.
- Lastly, the reviewer was asked to evaluate the file for overall compliance with the URA. For example, it is possible for a file to demonstrate poor advisory services yet have minimal

impact ultimately on the displaced person. In other instances, the lack of advisory services might prevent the displaced person from fully utilizing their relocation benefits.

Copies of the Residential and Nonresidential Evaluation Forms are included in this report as Attachments A and B respectively.

The review team for the on-site visit included 2 FTA staff and 3 subconsultant staff. In addition, one subconsultant staff person performed an off-site review of electronic files that were provided by HART. One FTA staff person performed file reviews and the other managed administrative tasks associated with the review. All subconsultant staff performed file reviews.

Reviews were completed for a total of 100 relocation assistance files. These files consisted of 29 residential relocations and 71 nonresidential relocations. The results of these individual relocation parcel file reviews are summarized in an Excel spreadsheet, which is submitted with this report.

Findings

The review findings are separated into two groups: findings for the key compliance areas of the URA regulations and findings for the overall file evaluations. In reporting the total number of findings in each of the key compliance areas, it is important to note that these totals reflect only one finding in an area of a relocation parcel file, although the noncompliance may have occurred multiple times for that relocation parcel. For example, a nonresidential displaced person may have received three separate moving cost payments and the relocation file did not contain documentation to support any of these payments. The Evaluation Form and the Excel spreadsheet will report three instances of noncompliance with the documentation requirement, however, this will count as one finding of noncompliance in the total number of findings in the documentation area.

Advisory Services:

50 of the 100 files (50%) had a finding of noncompliance with this critical component of the relocation assistance program. Advisory services are primarily verified by some type of narrative log or journal that documents the agency's contacts with the displaced person. This record demonstrates the quality of the assistance provided and is also evidence of the ongoing effort to assist throughout the process. Other file records can show an agency is meeting its advisory services responsibilities, such as delivery of notices, completion of survey/interview forms, and offers of replacement property.

One-half of the files reviewed indicated a failure to comply with this important requirement, and most of these lacked the most basic or minimal record to demonstrate that appropriate advisory services were provided to the displaced persons. Reviewers found many instances where an agent representing HART did complete an initial interview form, which seemed to indicate some explanation of the relocation program was provided. After that contact, however, the record was very sporadic or nonexistent. Generally, findings of this nature are not curable, and it is assumed that if advisory services are not documented in the relocation file, they were not provided.

Two other concerning issues related to advisory services were consistently noted. After an initial interview was conducted, almost all contacts between the agent and displaced person that were documented in the files were by email or telephone. In many files, it was not clear that the agent had any personal contact with the displaced person. The URA regulations do not mandate that all contacts be made in person, however, it is difficult for an agency to provide meaningful assistance

that meets the needs and preferences of persons it is displacing if agents do not visit the displacement and replacement sites and monitor the process.

There were numerous instances where HART acquired a building that was occupied by several business tenants. These tenants were displaced by the project, but they remained on the displacement site for a year or more as tenants, paying monthly rent to HART as the new owner. These tenants should have received a Notice of Relocation Eligibility promptly after the initiation of negotiations (ION) with the owner of the real property (the date of the first written offer to acquire by HART). This notice tells the displaced person definitively that they are displaced by the project and are eligible for certain benefits under the URA. In most cases, these tenants were not given the required Notice of Relocation Eligibility until many months after the ION and in some instances the delay was 3 years. This is a serious deficiency in advisory services.

Recordkeeping:

57 of the 100 files reviewed (57%) were not in compliance with the requirement that the displacing agency maintain adequate records of its displacements in sufficient detail to demonstrate compliance with the requirements of the URA. Many of the files reviewed contained so little information or documentation that it was difficult or not possible to determine what occurred, that is, how or why did HART decide to approve eligibility for certain payments and then approve the payment calculation. As with advisory services, keeping a contemporaneous record of contacts between the relocation agent and the displaced person would certainly assist in maintaining adequate records. Generally, findings of this nature are not curable; it is not possible to retroactively create the necessary records.

Documentation:

55 of the 100 files reviewed (55%) indicated noncompliance with the documentation requirement. This finding of noncompliance is serious for several reasons. The failure to establish and maintain consistent contacts between the relocation agent and displaced person impacts all levels of the relocation program. The file documentation necessary to explain or support a displaced person's eligibility for certain payments and the subsequent calculation of those payments was minimal to non-existent in most of the files reviewed. When files indicated that payments were issued to displaced persons, all files except one lacked the documentation to demonstrate the payments were delivered to or received by the displaced person. Findings related to the delivery or receipt of payments can possibly be retroactively supported by placing appropriate documentation in the file.

Notice Delivery:

15 of the 100 files reviewed (15%) were not in compliance with notice requirements under the URA regulations. These regulations require the delivery of certain relocation notices to displaced persons at various times in the relocation process. Most of the noncompliant files involved a finding that either the required Notice of Relocation Eligibility or the Ninety-Day Notice (sometimes both) were not in the file. The Notice of Relocation Eligibility informs a person that they are displaced by the project and eligible for specific benefits based on their occupancy status on the parcel on the date of initiation of negotiations. The Ninety-Day Notice may provide a displaced person with an assurance that the agency will not require them to move from the subject property in less than 90 days from the date of delivery. In the case of a residential occupant, the 90-day period cannot begin until the agency offers a comparable replacement dwelling. Alternatively, an agency can provide a 90-day period to move with a specific vacate date. This

90-day period to accomplish a move is one of the most important protections afforded a displaced person under the URA, and the displacing agency should never neglect this obligation. Generally, the failure to deliver relocation notices is not considered curable since the notices must be delivered prior to the displaced person's move from the displacement property.

In a few cases where the files had a Ninety-Day Notice to Vacate, HART provided less than the required 90-day period for the person to vacate the property. Although these relocations are noncompliant, the reviewers' evaluation indicated that it likely did not negatively impact the displaced person. A few relocation files lacked receipts for delivery or receipt of the required notices. The lack of receipts can be corrected by placing evidence of notice delivery or receipt in the files.

Probable Overpayments or Ineligible Payments:

28 of the 100 files (28%) included overpayments or ineligible payments. Some of the residential relocation overpayments were the result of a NEPA Environmental Justice mitigation requirement, but those payments exceeding URA maximums were not appropriately documented. For those displacements included in the review that were not subject to NEPA mitigation, many of the overpayments were the result of incorrect payment calculations. It is apparent from the file review that the relocation agents either did not understand the payment calculations or disregarded the URA requirements altogether. For example, several nonresidential files reviewed included payments for actual direct loss of tangible personal property. The proper calculation requires the agent to consider the cost of moving the personal property before determining the payment amount. The correct payment amounts using these move costs would have been significantly lower than the payments HART approved and paid.

These calculation errors and incorrect payments were further complicated by the lack of documentation in the files that could provide any understanding or insight about whether the displaced person was even eligible for certain payments. It appeared in many of these cases that relocation payments were made for items HART purchased as part of the real estate acquisition. If that is the case, these are a duplication of payments, which is a serious deficiency.

Distinguishing between an ineligible payment and an overpayment during this file review was difficult because of the poor recordkeeping and documentation in so many files. Regardless of the classification as an overpayment or ineligible, the payments would not be eligible for FTA participation. HART has indicated (but not provided an accounting) that they have paid back all past relocation assistance reimbursements received from FTA and is using only local funds for current active and future relocations.

Probable Underpayments/Benefits Not Offered or Paid:

16 of the 100 files reviewed (16%) indicated that displaced persons were either underpaid or were not offered eligible relocation benefits. Because the recordkeeping and file documentation was deficient in so many files, it was difficult to determine if an underpayment occurred or if eligible benefits were not offered. If there was adequate data available, the reviewers were able to identify probable underpayments.

The rental assistance replacement housing payments for several residential tenants were reviewed and the payment calculations did not consider whether the tenants met a low-income standard established in the regulations. It appeared from other file information that some of them did, which would have resulted in a higher rental replacement housing eligibility.

For each file, the FTA reviewer would anticipate certain types of payments that are typically claimed by each category of displaced person (e.g., residential owner-occupants, residential tenant-occupants, business, etc.) to be documented in the file. When these were not present, and no explanation was offered through a record of contacts or other documentation of advisory services, the reviewer could not determine if the displaced person chose not to make a claim or did not know about their eligibility for the payment. Lacking any documentation, it must be assumed the benefit was not properly offered or paid to the displaced person. There were also instances where an apparently eligible person was denied benefits with no explanation in the file to support that decision. These issues were noted on the review form for each parcel.

Generally, underpayments or no payments can be cured by locating the displaced person and retroactively offering the benefits not paid. All contacts and payments must be properly documented.

Global Settlements:

None of the 100 files reviewed indicated a global settlement had been negotiated that included payment for the acquisition of real property and all relocation costs.

Figure 1.0 below displays the number of findings in each noncompliance category.

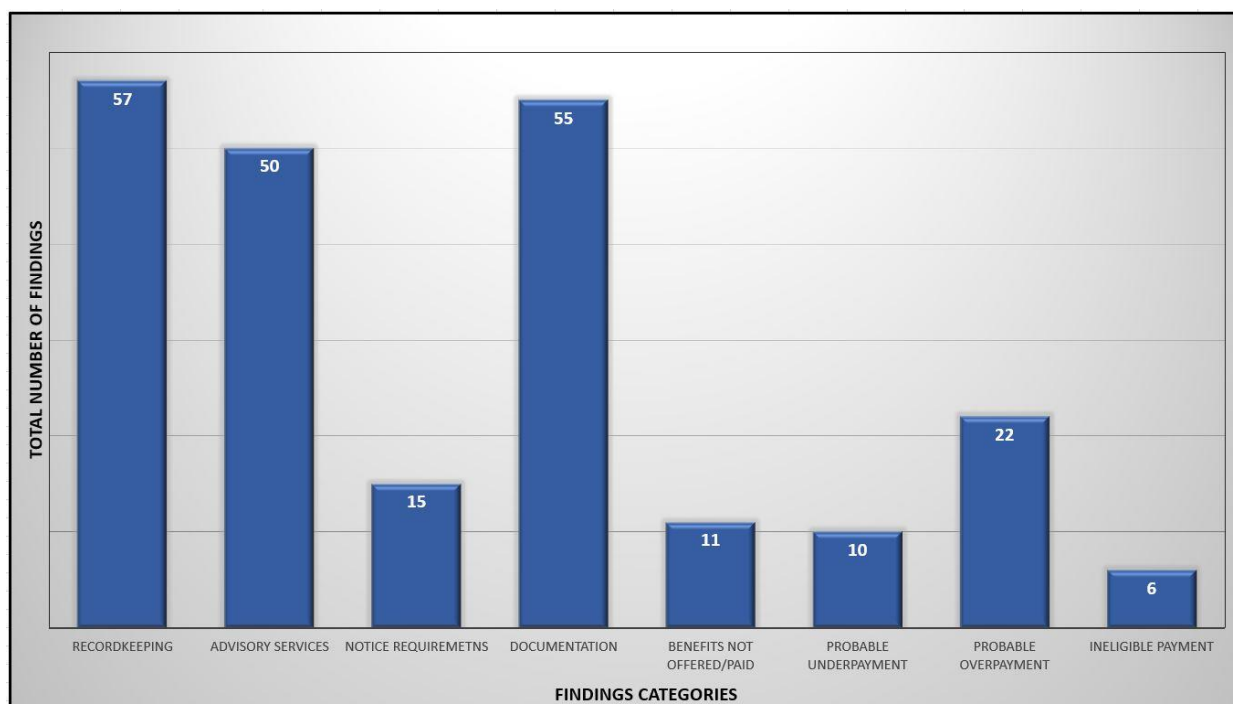


Figure 1.0 – Findings in Each Noncompliance Category

URA Compliance Assessment

Each relocation file was evaluated for overall compliance with the URA. These comprehensive evaluations provide the basis for the assessment required under the scope of the task order. There

were four overall levels of compliance/noncompliance identified. These four levels were discussed at the beginning of this report. The number of relocation files that were classified in each level is indicated below. The summary of each relocation file and the specific areas in which each are deficient with the URA requirements is contained in an Excel spreadsheet which is submitted as part of this report. This spreadsheet also provides an assessment of each parcel's level of URA compliance.

File Is in Compliance with URA Requirements

Our evaluation indicated that 6 of the 100 files reviewed (6%) were in compliance with URA requirements. This percentage is very low, and the reviewers noted that some of these files had minor problems that did not rise to the level of noncompliance.

File Is Not in Compliance with URA Requirements, But Can Be Brought into Compliance with Corrective Action

Our evaluation indicated that 19 of the 100 files reviewed (19%) were not in compliance with the URA, however, corrective action can be taken to bring these files into compliance

File Is Not in Compliance with URA Requirements, Cannot Be Brought into Compliance, But Likely Did Not Negatively Impact Displaced Person

Our evaluation indicated that 31 of the 100 files reviewed (31%) were in this more serious level of noncompliance, although the assessment indicated the displaced person was likely not harmed by the noncompliance. Note that some areas of noncompliance in these files may be curable, but others are not, which resulted in an overall conclusion that the file cannot be brought into compliance.

File Is Not in Compliance with URA Requirements, Cannot Be Brought into Compliance, And Likely Had a Negative Impact on Displaced Person

Our evaluation indicated that 44 of the 100 files reviewed (44%) were in this highest level of noncompliance. The noncompliance is not considered curable and the displaced persons were likely harmed as a result. Note that some areas of noncompliance in these files may be curable, but others are not, which resulted in an overall conclusion that the file cannot be brought into compliance.

Figure 2.0 on the following page displays the percentages of the different levels of compliance/noncompliance found.

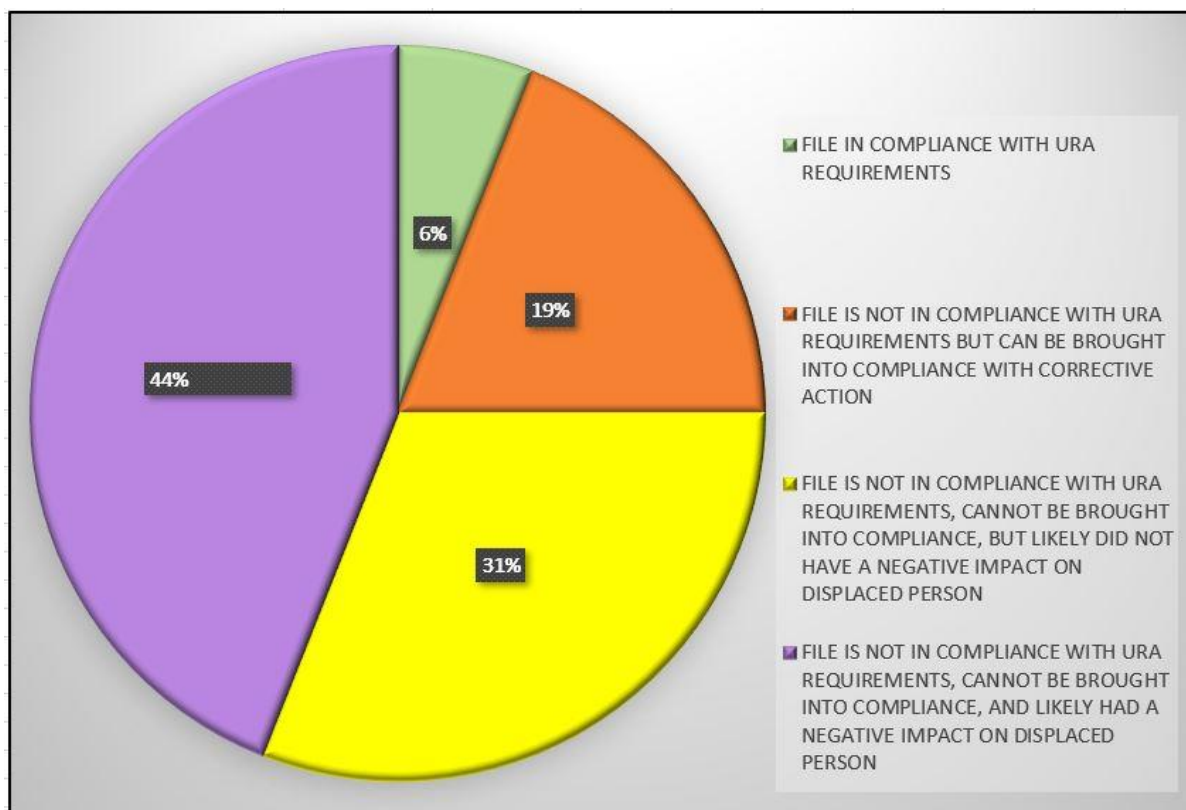


Figure 2.0 – Levels of Compliance/Noncompliance

The HART project is clearly not in compliance with the requirements of the URA and its implementing regulations when 75% of the files indicate noncompliance that is not considered curable. It is likely that persons displaced by this project were harmed by the displacement, rather than receiving the appropriate services and benefits required under the URA.

The highest occurrence of overall noncompliance was in the category of files that cannot be brought into compliance, and likely had a negative impact on the displaced person (44%). There were numerous noncompliance issues for this project that occurred consistently over many years and the combination of these issues led to a conclusion that persons displaced by the project were likely harmed by the displacement. This result runs counter to the primary purpose of the URA, which is to treat displaced persons fairly, consistently and equitably. An agency has a responsibility for ensuring that persons displaced by a project are not impacted unequally by a project that serves the public good.

The negative effects of HART's noncompliance were observed across several aspects of the relocation program, especially when displaced persons did not receive appropriate payments. The best way to demonstrate these effects is to provide a few examples. On one parcel, a person was operating a tenant business while also occupying a portion of the property as a residential tenant. Rather than properly identifying two separate displaced persons, the business and residential tenant, HART only offered relocation benefits to the business. The tenant occupant was not advised of his eligibility for a rental replacement housing payment and did not receive any of the benefits to make comparable rental replacement housing available as required by the URA.

There were several instances noted of displaced residential tenants who probably received a rental assistance replacement housing payment that was less than the correct eligible amount. The intent of the URA is that a low-income person's income should be considered when computing a rental subsidy. For these people, the subsidy is the difference between 30% of gross monthly household income and the cost of the replacement rental dwelling, rather than comparing their current rental amount to the rental replacement amount. The consideration of income often results in an eligibility amount several thousand dollars higher than a "rent to rent" calculation. The files did not show that HART inquired about any of these tenants' income or attempted to verify income, although these files contained other information that indicated the likelihood these tenants would have qualified as "low-income." Without knowing the income of these displaced persons, it is not possible to quantify the potential financial harm caused.

The Excel spreadsheet submitted with this report contains a summary of each relocation parcel file and the specific areas in which each is deficient. Although this document does identify numerous noncompliance items that can be cured, the correction of just these items would not bring HART's relocation program into substantial compliance with the URA requirements. The relocation parcels with curable noncompliance only represented 19% of all files reviewed. The more serious noncompliance that is considered non-curable indicated repeated, systemic problems primarily in the areas of advisory services, recordkeeping, and documentation. These problems in turn created noncompliance in the areas of notice requirements, overpayments/ineligible payments, and underpayments/benefits not offered or paid. An agency cannot operate a sound relocation program by reacting to errors or problems after they occur; it must demonstrate an understanding of the URA requirements and build compliance into its process.

HART will be unable to demonstrate substantial compliance with the URA without a written plan for process improvements that shows how HART will ensure the quality of advisory services, the maintenance of adequate records of its relocation activities to demonstrate URA compliance, and the thorough, contemporaneous documentation of the relocation process for each displaced person.

Recommended Corrective Action for Project Compliance

The reviewers' assessment indicated that most of the files were not in compliance with the URA and could not be brought into compliance. These assessments were primarily based on the type of noncompliance found. If a file is noncompliant in notice requirements or advisory services, it is usually not possible to correct those issues because the displaced person has already moved from the project site. The time for delivering notices has passed and if a contemporaneous record of contacts demonstrating advisory assistance was not kept, it cannot be created after the fact. On the other hand, there were situations where a parcel file could have some findings considered not curable while other findings were curable. For example, underpayments or failure to offer displaced persons payments for which they are eligible are serious noncompliance findings, however, it is possible to cure the noncompliance by locating these persons and offering the benefits not paid. In those parcel files where some findings were considered curable and other were not, the overall file assessment would necessarily be not curable.

Although the level of noncompliance is significant, the review team recommends that HART develop and implement a comprehensive strategic plan for corrective action to focus on two areas. First, this plan needs to address those findings of noncompliance that had negative impacts on persons displaced by the project. The reviewers acknowledge that some noncompliance cannot be fixed after the fact, however, HART can undertake corrective actions to provide the proper

payments in the proper amounts that will clearly benefit the displaced persons who have been affected.

Secondly, the plan needs to identify process improvements for HART's relocation program. It was evident from this review that HART does not have a recognized process or procedures in place that guide the decisions or actions for staff and consultants. Formalizing a process that is accompanied by procedures, guidance and best practices will provide the direction needed for a URA compliant relocation program.

A corrective action plan that will bring HART's relocation assistance program into substantial compliance with the URA requirements will involve a commitment of time and personnel resources. The deficiencies outlined in the report will necessarily require corrective action that includes an individual review and analysis of each relocation, a personal meeting with each person displaced by the project, an assessment of relocation assistance benefits, and a process that allows for relocation appeals. These activities represent a very labor-intensive effort for any knowledgeable, experienced relocation agent. An assessment of current HART real estate staff and consultant staff performed as part of this review indicated that **the agency does not have adequate qualified staff to apply the URA requirements** (reference Review of Current Real Estate Staff and Consultants provided in next section of report).

HART will need to engage an adequate number of qualified personnel to accomplish the corrective action as soon as possible to increase the likelihood of making appropriate payments to eligible displaced persons. The **time frame for completing the corrective action should not exceed 9-12 months**. Based on the reviewers' experience, it may require as many as four (4) full-time, well qualified personnel to effectively and accurately accomplish corrective action in a reasonable time. HART will need to determine the actual number of persons required, in consultation with FTA, by carefully assessing the URA qualifications of each person.

Bringing HART's relocation program back into substantial URA compliance will improve FTA's ability to administer its responsibilities for a URA compliant relocation program and strengthen the public's confidence in the agency's ROW acquisition process. A successful corrective action plan will accomplish the goal of ensuring that persons displaced by the HART project are not harmed and establish a framework for HART to ensure the quality of advisory services, the maintenance of adequate records of its relocation activities to demonstrate URA compliance, and the thorough, contemporaneous documentation of the relocation process for each displaced person.

Review of Current Real Estate Staff and Relocation Consultants

The scope of work for this relocation review required an assessment of HART's current real estate staff and its relocation consultants regarding their capacity and capability to fully comply with URA requirements moving forward. Unlike the file reviews that assessed past project performance, this aspect of the review was seeking information about any real estate staffing issues that could impact the ability to move the relocation program beyond its status now.

The evaluation of staff and consultants was performed through individual interviews, since familiarity with the URA and relocation work experience is a useful predictor of successful performance. Prior to conducting interviews, an interview form was prepared so a consistent interview process could be maintained by all persons conducting the interviews. The interview form asked about general knowledge of the workings of the URA and about specific relocation experience each interviewed person had.

The interviews were conducted privately by telephone by Sean Ingvalson (FTA), Victor Otero (FTA), and Robert Merryman (O. R. Colan Associates).

Summary of the people interviewed:

HART Engaged in both acquisition and relocation work on the project	3 persons
Colliers – real estate consulting firm under contract to HART 2 people interviewed had previous experience working on the project through employment with a predecessor consultant	7 persons
W. D. Schock Company – consultant providing quality control for relocation work for HART staff	3 persons
Total interviewed	13 persons

Findings

Of the 13 persons interviewed, only 6 (46%) considered themselves to be competent or an expert in their understanding of URA requirements for the real estate acquisition and relocation work. This is a low percentage for a project with the complexity of the HART project. This lack of experience has persisted on the project from the beginning, and the agency has not established an effective project workforce. HART reports it is difficult to hire and retain both consultants and staff, which has contributed to a long-term problem.

Eight of the interviewees reported that their function on the project is “right of way support.” This number seems high given that there are more support personnel than production personnel; however, the project is in its later stage, and many of the active production personnel are no longer with the project.

The interviewers also asked the staff and consultants about their understanding of the HART real estate process. The HART process would involve, for example, how a settlement is approved or the materials to be provided to the legal staff to condemn a parcel. Only 1 person indicated they felt they had a clear understanding of the process. Two persons indicated no understanding of the process. The remaining ten persons felt they had some knowledge of the process.

Given the size of this project, one person with a clear understanding is insufficient to conduct an effective program. Errors and incorrect payments are likely to occur, and in this case they did.

In summary, it appears that ongoing turnover in HART staff and consultants has resulted in an overall insufficiently experienced staff. Some of the consultants employed on the project also lack a good or adequate understanding of the URA.

There has also been ongoing turnover in HART management, which has resulted in a lack of experience and understanding about the applicability of the URA requirements and the impact on real estate project delivery.

Recommended Action for Staff Capacity and Capability

HART should seek at least two highly qualified persons to act as “on-site” managers of the various aspects of the URA. Completed work should flow through these persons so that the quality of the work improves. These qualified persons would also provide staff training.

ATTACHMENTS

A. FTA Relocation File Evaluation Forms – Residential	17
B. FTA Relocation File Evaluation Forms – Non-Residential	20

Attachment A



Attachment A
FTA Relocation File Evaluation-RESIDENTIAL
49 CFR Part 24 Requirements

Agency Parcel #:	FTA #:	Reviewer: Choose an item.
Name:		
Address:		
Occupancy: Homeowner <input type="checkbox"/> Tenant <input type="checkbox"/> Other <input type="checkbox"/>		
Initiation of Negotiations Date: Click or tap to enter a date.		
Vacate Date: Click or tap to enter a date.		Project: Honolulu Rapid Transit Project

Subpart A General	
<u>§24.5 Delivery/Receipt Documentation</u>	
General Information Notice/Agency Brochure: Choose an item.	
Notice of Relocation Eligibility: Choose an item. Delivery Date: Click or tap to enter a date.	
Ninety Day Vacate Notice (Assurance): Choose an item. Delivery Date: Click or tap to enter a date.	
30-Day Notice: Choose an item. Delivery Date: Click or tap to enter a date.	
<u>§24.9 Recordkeeping and §24.10 Appeals</u>	
Adequate File Records Maintained: Choose an item.	
Displacement Subject of Appeal: Choose an item. §24.10 Requirements Met: Choose an item.	

Subpart B Real Property Acquisition	
§24.102 Realty/Personal Property Report in File: Choose an item. Payment Duplication: <input type="checkbox"/> (finding)	

Subpart C General Relocation Requirements	
<u>§24.203 Notices Included in File</u>	
General Information Notice/Agency Brochure: Choose an item.	
Notice of Relocation Eligibility: Choose an item.	
Ninety Day Vacate Notice (Assurance): Choose an item. 90 Days Provided: Choose an item.	
30-Day Notice: Choose an item.	
<u>§24.204 Availability of comparable replacement dwelling before displacement</u>	
Was a Comparable Dwelling Made Available 90 Days Prior to Required Vacate? Choose an item.	
<u>§24.205 Advisory Services</u>	
Advisory Services Provided: Choose an item.	
<u>§24.208 Legal Residency</u>	
Certificate of Legal Residency in File: Choose an item.	

Subpart D Payments for Moving and Related Expenses	
<u>§24.301(b) and §24.301(g) Move Expenses (residential)</u>	
Commercial Move <input type="checkbox"/> , or Self-Move <input type="checkbox"/> , or Combination <input type="checkbox"/>	
Self-Move Method: Choose an item. Method Utilized Meets Requirements: Choose an item.	

Subpart E Replacement Housing Payments	
Occupancy Type: Choose an item.	
Claim Type: Choose an item.	
Housing of Last Resort: Choose an item. Supporting Documentation in File: Choose an item.	
Low Income Determination (LID): Choose an item. LID Completed: Choose an item.	
Decent, Safe, & Sanitary Inspection: Choose an item.	

Subpart F Mobile Homes	
§24.502 and §24.503 Status: Choose an item. Claim Type: Choose an item.	

FTA Relocation File Evaluation-RESIDENTIAL
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RELOCATION CLAIMS/ADVANCE PAYMENTS/PAYMENTS FOR TENANT OWNED IMPROVEMENTS

Claim	Amount	Payee	Paid Date	Payment Receipt in File
1	\$	Choose an item.	Click or tap to enter a date.	Choose an item.
2	\$	Choose an item.	Click or tap to enter a date.	Choose an item.
3	\$	Choose an item.	Click or tap to enter a date.	Choose an item.
4	\$	Choose an item.	Click or tap to enter a date.	Choose an item.
5	\$	Choose an item.	Click or tap to enter a date.	Choose an item.

FINDINGS TABLE List all areas of non-compliance with URA requirements. Note: All missing items, responses in the negative, and 'NO' answers from Page 1 require a FINDING

#	Finding Category	Item	Curable*
1	Choose an item.	Choose an item.	Choose an item.
2	Choose an item.	Choose an item.	Choose an item.
3	Choose an item.	Choose an item.	Choose an item.
4	Choose an item.	Choose an item.	Choose an item.
5	Choose an item.	Choose an item.	Choose an item.
6	Choose an item.	Choose an item.	Choose an item.
7	Choose an item.	Choose an item.	Choose an item.
8	Choose an item.	Choose an item.	Choose an item.
9	Choose an item.	Choose an item.	Choose an item.
10	Choose an item.	Choose an item.	Choose an item.

***List Curable 'Findings' on the 'Curable Findings' Table. List Non-Curable 'Findings' on the Non-Curable Findings Evaluation' Table.**

**FTA Relocation File Evaluation-RESIDENTIAL
49 CFR Part 24 Requirements**

§24.4(b) Corrective Action Requirements (Description of corrective action for items listed as curable on FINDINGS TABLE)

Curable Findings Table

Finding #	Cure
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	

Non-Curable Findings Evaluation Table (Items listed as not-curable on FINDINGS TABLE)

Finding #	Evaluation
Choose an item.	Choose an item.
Choose an item.	Choose an item.
Choose an item.	Choose an item.
Choose an item.	Choose an item.
Choose an item.	Choose an item.

A	Total Payments Issued (Including Tenant Improvements)	\$
B	Documented Payment Eligibility Based on File Records	\$
C	Difference	\$

Overall Relocation Payment Evaluation: Choose an item.

Overall File Evaluation: Choose an item.

Date Reviewed: Click or tap to enter a date.

Reviewer Comments:

Attachment B



Attachment B
FTA Relocation File Evaluation-NONRESIDENTIAL
49 CFR Part 24 Requirements

Agency Parcel #:	FTA #:	Reviewer: Choose an item.
Name:		
Address:		
Type: Business <input type="checkbox"/> Nonprofit <input type="checkbox"/> Personal Property Only <input type="checkbox"/>		
Occupancy: Owner <input type="checkbox"/> Tenant <input type="checkbox"/>		
Initiation of Negotiations Date: Click or tap to enter a date.		
Vacate Date: Click or tap to enter a date.		Project: Honolulu Rapid Transit Project

Subpart A General	
<u>§24.5 Delivery/Receipt Documentation</u>	
General Information Notice/Agency Brochure: Choose an item.	
Notice of Relocation Eligibility: Choose an item.	Delivery Date: Click or tap to enter a date.
Ninety Day Vacate Notice (Assurance): Choose an item.	Delivery Date: Click or tap to enter a date.
30-Day Notice: Choose an item.	Delivery Date: Click or tap to enter a date.
<u>§24.9 Recordkeeping and §24.10 Appeals</u>	
Adequate File Records Maintained: Choose an item.	
Displacement Subject of Appeal: Choose an item. §24.10 Requirements Met: Choose an item.	

Subpart B Real Property Acquisition	
§24.102 Realty/Personal Property Report in File: Choose an item.	
§24.103 Compensation for Tenant Owned Improvements: Choose an item.	
Basis for Compensation: Choose an item.	Date Paid: Click or tap to enter a date.
Compensation for Tenant Owned Improvements Documented: Choose an item.	
Likely Duplication of Compensation <input type="checkbox"/> (requires finding if checked)	

Subpart C General Relocation Requirements	
<u>§24.203 Notices Included in File</u>	
General Information Notice/Agency Brochure: Choose an item.	
Notice of Relocation Eligibility: Choose an item.	
Ninety Day Vacate Notice (Assurance): Choose an item.	90 Days Provided: Choose an item.
30-Day Notice: Choose an item.	
<u>§24.205 Advisory Services</u>	
Advisory Services Provided: Choose an item.	
<u>§24.208 Legal Residency</u>	
Certificate of Legal Residency in File: Choose an item.	

Subpart D Payments for Moving and Related Expenses	
§24.301(e) Personal Property Only Move <input type="checkbox"/> (not eligible for reestablishment/search expenses)	
§24.301(d), §24.301(g), and §24.303 Move Expenses (nonresidential)	
Commercial Move <input type="checkbox"/> , or Self-Move <input type="checkbox"/> , or Combination <input type="checkbox"/> and §24.304 Reestablishment Expenses <input type="checkbox"/>	
Self-Move Cost Basis: Choose an item.	
Storage Expenses: <input type="checkbox"/>	
Search Expenses Paid: Choose an item.	
§24.301(d) Personal Property Inventory: Choose an item.	Date: Click or tap to enter a date.
OR	
§24.302 Fixed Payment <input type="checkbox"/> Entity: Choose an item. Eligible for Fixed Payment: Choose an item.	
File Documentation Supports Amount of Fixed Payment: Choose an item.	

FTA Relocation File Evaluation-NONRESIDENTIAL
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RELOCATION CLAIMS/ADVANCE PAYMENTS/PAYMENTS FOR TENANT OWNED IMPROVEMENTS

Claim	Amount	Payee	Paid Date	Payment Receipt in File
1	\$	Choose an item.	Click or tap to enter a date.	Choose an item.
2	\$	Choose an item.	Click or tap to enter a date.	Choose an item.
3	\$	Choose an item.	Click or tap to enter a date.	Choose an item.
4	\$	Choose an item.	Click or tap to enter a date.	Choose an item.
5	\$	Choose an item.	Click or tap to enter a date.	Choose an item.

FINDINGS TABLE List all areas of non-compliance with URA requirements. Note: All missing items, responses in the negative, and 'NO' answers from Page 1 require a FINDING

#	Finding Category	Item	Curable*
1	Choose an item.	Choose an item.	Choose an item.
2	Choose an item.	Choose an item.	Choose an item.
3	Choose an item.	Choose an item.	Choose an item.
4	Choose an item.	Choose an item.	Choose an item.
5	Choose an item.	Choose an item.	Choose an item.
6	Choose an item.	Choose an item.	Choose an item.
7	Choose an item.	Choose an item.	Choose an item.
8	Choose an item.	Choose an item.	Choose an item.
9	Choose an item.	Choose an item.	Choose an item.
10	Choose an item.	Choose an item.	Choose an item.
11	Choose an item.	Choose an item.	Choose an item.
12	Choose an item.	Choose an item.	Choose an item.

*List Curable 'Findings' on the 'Curable Findings' Table. List Non-Curable 'Findings' on the Non-Curable Findings Evaluation Table.

**FTA Relocation File Evaluation-NONRESIDENTIAL
 49 CFR Part 24 Requirements**

§24.4(b) Corrective Action Requirements (Description of corrective action for items listed as curable on FINDINGS TABLE)

Curable Findings Table

Finding #	Corrective Action/Cure
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	
Choose an item.	

**FTA Relocation File Evaluation-NONRESIDENTIAL
 49 CFR Part 24 Requirements**

Non-Curable Findings Evaluation Table (Items listed as not-curable on FINDINGS TABLE)

Finding #	Evaluation
Choose an item.	Choose an item.
Choose an item.	Choose an item.
Choose an item.	Choose an item.
Choose an item.	Choose an item.
Choose an item.	Choose an item.
Choose an item.	Choose an item.
Choose an item.	Choose an item.
Choose an item.	Choose an item.

A	Total Payments Issued (Including Tenant Improvements)	\$
B	Documented Payment Eligibility Based on File Records	\$
C	Difference	\$

Overall Relocation Payment Evaluation: Choose an item.

Overall File Evaluation: Choose an item.

Date Reviewed: Click or tap to enter a date.

Reviewer Comments:
